

EXHIBIT A
TO THE DECLARATION OF DAVID H. KRAMER

Judge dismisses suit over Google ranking

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A California judge on Thursday dismissed a Web site's lawsuit against Google over its fall in the Google search index, but left the door open for the lawsuit to be amended and refiled.

KinderStart, a directory and search engine for information related to children, sued Google in March after it fell to a "zero" ranking in the Google index. The lawsuit claimed that by lowering KinderStart's site in its PageRank system, Google had engaged in "pervasive monopolistic practices" that led to the denial of the site's free speech rights, prevention and destruction of competition, and predatory pricing, among nine counts total.

As a result of the drop in ranking, traffic and monthly page views to KinderStart's Web site fell 70 percent or more and the company's revenue from advertisements through Google's AdSense syndication program fell by more than 80 percent, according to the lawsuit.

U.S. District Judge Jeremy Fogel for the Northern District in San Jose dismissed all nine claims, saying that KinderStart's claims were insufficient or failed to allege facts or conduct to support that the claims or were too vague.

Fogel specifically dismissed some of the claims against Google "with leave to amend," meaning that KinderStart can modify and refile the complaint.

Google's senior litigation counsel, Michael Kwun, said in a statement: "We are pleased that Judge Fogel dismissed all of KinderStart's claims."

Meanwhile, KinderStart attorney Gregory Yu also claimed victory, noting that the judge left the door open by allowing KinderStart to refile the claims. He said he plans to file an amended complaint before the next court date, which is scheduled for Sept. 29.

Yu also said he was encouraged by the judge's discussion pertaining to the defamation claim, and he urged other Web site publishers to contact him at

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Glawinfo.com to join the lawsuit, which seeks class action status.

"The decision suggests that, if properly alleged, Google may be defaming a whole class of Web sites sacked with a '0' PageRank," he wrote in a statement. "If plaintiffs show Google manually tampered with even a single Web site's PageRank, Google's entire claim of 'objectivity' of search results and rankings could collapse."

Eric Goldman, an assistant professor of law at Marquette University Law School, said the ruling was favorable for Google, except for the discussion on defamation.

"Frankly, there are very few novel or surprising aspects of this ruling. For example, the judge rejected the claim that Google was a state actor, but this ruling is entirely consistent with the dozen or so precedents involving private Internet companies," Goldman wrote on his blog. "The other rulings seemed very sensible and fairly predictable from the complaint. It's pretty clear that the judge thinks that some of KinderStart's claims have no chance even with repleading, but the judge apparently has decided to give KinderStart that chance rather than just shutting the door."

Fogel wrote that a PageRank score reflects Google's opinions, and suggested that a score generated by a computer algorithm is likely not defamatory. But if KinderStart can prove a case of "manual intervention" by Google, Fogel wrote, the outcome might be different.

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